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Supreme Court, U.S.
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No. 08-_____

In The

Supreme Court of the United States

MARGUERITE SAMMANN, Individually, and as Executrix of the Estate of DR. HOWARD DAVID SAMMANN, M.D., et al.,

Petitioners,

v.

FRANCIS N. MAYER, Individually, and LOUISE MAYER, Individually, and as a Marital Community, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A Ninth Circuit panel affirmed a single Federal judge's sua sponte dismissal of Marguerite and Nadene Sammann's substantial monetary claims for federal Oil and Gas Leases and for other properties. The federal leases are for valuable commercial quantities of oil and gas, many of which are located in Alaska. Petitioner Marguerite is the widow of Dr. Howard David Sammann, M.D. and Executrix of his estate. She was married to him for 31 years, when he died after a 7 year illness. It was a first and only marriage for both.

The questions presented are:

1. Should petitioners have been punished so severely with dismissal when the Ninth Circuit (in an unpublished decision) upheld the denial of their right to timely amend their complaint?

2. May the Ninth Circuit use an in-house method of deciding the merits of a case based on the length of a petitioner's docket (as the Ninth Circuit did here, contrary to the other Circuits), when petitioners were never informed that their case would be decided in this manner, and the Supreme Court has specified that only legal standards of review should be used to decide the merits of a case?

3. Is this punitive dismissal of their multi-million dollar complaint and denial of the right to amend their complaint constitutional due process?

PARTIES TO THE PROCEEDING

The petitioners in this Court include Marguerite Sammann individually, and as Executrix of the Estate of her late husband, Dr. Howard David Sammann, M.D.. Their only child, Nadene M. Sammann is also a petitioner. They were plaintiffs in the district court and appellants before the Ninth Circuit Court of Appeals.

The respondents in this Court include Francis N. Mayer, individually, and as a Marital Community, and Louise Mayer, individually, and as a Marital Community. They were defendants in the district court and appellees before the Court of Appeals. Francis N. Mayer as personal representative of the Estate of Elizabeth Sammann was also a defendant in district court and an appellee in the Court of Appeals.

Petitioners Marguerite Sammann and Nadene Sammann were not notified that the Estate of Elizabeth Sammann (grandmother to Nadene) had been closed before the filing of this lawsuit.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Marguerite and Nadene Sammann respectfully petition for a timely writ of certiorari to review the ruling of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's two unpublished opinions affirming the district court's dismissal of this case and denying rehearing and rehearing en banc are unreported and are reprinted at App.1-4. The district court's two unpublished opinions are unreported and reprinted at our supplementary appendix.

JURISDICTION

The Ninth Circuit affirmed the district court's dismissal of this case on September twenty-seventh, 2007, and denied petitioners' timely request for rehearing and rehearing en banc on November twenty-ninth, 2007. This Court has jurisdiction under 28 U.S.C.sec.1254.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment provides: "No State shall deprive any person of life, liberty, or property, without due process of law". The Fifth Amendment provides: "No person shall be deprived of life, liberty or property, without due process of law."

INTRODUCTION

This petition seeks review of a tort case involving due process and valuable federal oil and gas leases. This case raises important federal questions about manifest injustice.

1) *First* Amending a complaint for the first time is usually granted as a matter of course. In this case, we had previously made only one change to our complaint: adding the name of Louise Mayer to the caption. No other change was made before we filed our full amended complaint. In upholding this dismissal of our case, the Ninth Circuit departed from the wide latitude traditionally given to a litigant when a case is in its infancy.

2) *Second.* The Supreme Court has established specific legal standards of review that the lower federal courts must follow. The Ninth Circuit has departed from these standards of review by deciding the merits of a case based on the length of an unrepresented litigant's docket. In ruling on our case, the court overlooked the Federal Disasters and blackouts that we faced in the Seattle area while our appeal was pending. We believe the Ninth Circuit's methods lack fundamental basic fairness to litigants.

3) *Third.* The Ninth Circuit affirmed a punitive dismissal and denial of our right to amend our complaint. Considering how diligent we were about our case, it does seem that the Ninth Circuit did not use the correct reasoning to decide this case. We did not deserve the dismissal of our original complaint and our amended complaint.

STATEMENT OF THE CASE

A. Factual Background

1. Petitioner Marguerite Sammann is the widow of Dr. Howard David ("David") Sammann. She is also the Executrix of his estate. When David died, after a 7 year illness, he and Marguerite had been married for more than 31 years. It was a first and only marriage for both. Nadene is their only child.

During their 31 year marriage, David and Marguerite lived in California, Alaska and Washington State, amongst other places

David was an internationally educated physician. He was a practicing medical doctor specializing in industrial and aerospace medicine. He was an experienced pilot and an FAA Senior Examiner. He and Marguerite owned their own plane.

David had a deluxe one million dollar medical insurance policy. When he died, most of the medical benefits were unused.

After his death, petitioners discovered that the community assets, David's estate and family fortune had vanished. Elizabeth Sammann (grandmother to Nadene) could give them no information about David and Marguerite's fortune,

The result was that Marguerite and Nadene were chased by many creditors. We were literally left with all the debts of the estate, and the family fortune had disappeared.

We suffered lost income, lost a family business. And we were in constant danger of losing our home. The creditors wanted the home and every last thing we possessed.

Respondents are Francis N. Mayer and Louise Mayer, husband and wife. They are longstanding residents of St. Paul, Minnesota.

Before David's death, his first cousin, Francis Mayer and Mayer's wife, Louise, had cultivated David and Elizabeth. After David's death, both Francis and Louise Mayer disappeared. It was as though they dropped off the face of the earth.

In May, 2005, two weeks before this case was filed in Federal District Court in Seattle, petitioners discovered the Federal oil and gas leases in this case. The Mayer respondents had concealed and converted the federal oil and gas leases and other properties to themselves.

Petitioners also discovered that a death certificate for Marguerite Sammann had been created and filed in the State of Minnesota. The death certificate was filed six months before David's death.

Neither Marguerite or Nadene has ever visited or lived in Minnesota.

Petitioners tried to secure legal counsel, but lacked the funds to pay an attorney.

The Facts related above are from our original complaint and corrected brief in the Ninth Circuit.

B. Proceedings Below

1. Plaintiffs filed this lawsuit on May 19, 2005 in Federal District Court in Seattle, Washington. We were unrepresented. We paid the filing fee.
The Mayer respondents were timely served but never answered the complaint. Instead, they filed a motion to dismiss the complaint, or in the alternative, for summary judgment. Within their motion to dismiss they stated that additional defendants needed to be added. We requested and received permission to add defendants and timely amended our complaint. We also asked for an extension of time to prepare our response to the respondents' motion.

2. Pursuant to the statute 31 U.S.C. 3730, we asked the Court to seal the amended complaint and for an extension of time to serve it. The court gave us an extension of time and then ordered us to serve all the defendants. The Court never specified *which defendants* we were to serve, e.g. whether the Mayer defendants or the new defendants we had added to the complaint should be served.

3. At this point in time, all our pleadings were up to date; we had met our joint status report requirements. We were diligent about our case.

4. After explaining to the Court that the statute required a stay of service of 60 days on any and all the defendants, the court ordered us to serve the defendants, again never specifying which defendants.

5. We communicated to the Court, and requested oral argument on our Motions. The Court refused to hold any hearings or status conferences. The Court never asked to meet with us or hold any status conferences. During the entire District Court proceedings, we never had any hearing in District Court or met with the judge. There was no trial, and no discovery took place.

6. On February 28, 2006, the court dismissed our complaint, and denied us the right to amend our complaint, citing our failure to follow a local rule. The Court essentially converted its dismissal into a summary judgment.

7. We filed a timely motion to reconsider the dismissal and asked to amend our complaint again. The Court denied our motion. The record indicates that many of the Court's facts and legal conclusions used in its dismissal and denial of reconsideration were false and contradictory .The Mayer defendants filed an untimely request for sanctions against us. We also filed a motion for sanctions (per Local Rule) because the Mayers' attorney had moved; he left no address and we had no place to serve the documents. The Court denied both requests for sanctions.

B. Ninth Circuit Court of Appeals

1. On March 24, 2006, and on May 24 , 2006,we filed our timely consolidated appeals with the Ninth Circuit. We paid two filing fees, and timely served the Mayer defendants- appellees.

2. After receiving two extensions of time we filed our brief and then requested permission to file a corrected brief. We also asked for Judicial Notice of the death certificate for Petitioner Marguerite Sammann(she is still alive). Said death certificate had been created and filed in Minnesota, home state of the appellees, Francis and Louise Mayer.

3. Two of our filings with the Ninth Cir. disappeared and we had to file them all over again.

4. In November and December 2006, the Seattle area experienced a Federal disaster followed by record high winds that knocked out power to more than one million households, including ours. We had no heat, no power and no light. Temperatures were below freezing. We could not finish our filings on time and had to ask for an extension of time.

5. Just before the Panel decided our case, we were informed by an attorney in the Ninth Circuit's Pro-Se division that a litigant's case (in particular unrepresented ones) is judged by how many documents have been filed and are on the docket. We didn't know that. And the pro-se handbook given to pro-se litigants says nothing about this "standard of review" that is solely reserved for unrepresented litigants.

6. On September 27, 2007, a Ninth Circuit panel affirmed the district court's dismissal of our case and denied our request for Judicial Notice. (App 3-5).

7. We asked for an extension of time to file our petition for rehearing and rehearing en banc, because petitioner Nadene Sammann had sustained an injury. The Ninth Circuit Panel agreed to the extension, and we then filed our timely Petition for Rehearing and Rehearing En Banc.

8. On November twenty-ninth, 2007 the Ninth Circuit again denied our Petition for Rehearing and Rehearing En Banc. (App 1-2)

9. We also filed a motion for a stay of the mandate in order to file our Petition for Writ of Certiorari in this Court.

10. For the record, in our motion for a stay, we listed the above issues and reasons that we would ask for in a petition for writ of certiorari in this court.

11. The Ninth Circuit court denied our motion for a stay of mandate.

This timely Petition for Writ of Certiorari follows.

REASONS FOR GRANTING THE PETITION

This case unquestionably raises important issues of Constitutional dimension. The Ninth Circuit's blanket affirmation of the District Court's decision all raise important and recurring due process questions on which this Court's guidance is urgently needed.

But the Ninth Circuit's decisions raise troubling questions about the Court's remedies for manifest injustice.

I. **The Court Should Grant Certiorari to Remedy The Manifest Injustice of the Dismissal of Petitioners' Case. The Value of these Substantial Assets Alone Merits a Closer Look And Review of Our Case**

The federal Oil and Gas Leases that are the subject of this case have valuable commercial quantities of oil and gas on them. These substantial assets are multi-million dollar assets.

This case offers the Court an opportunity to lead by example and show how standards of review should operate in practice.

II. The Court Should Grant Certiorari in Order To Exercise its Supervisory Powers and Make Clear To the Lower Courts the Correct Standard of Review

The correct standards of review should be made clear to both the lower courts and to all litigants who appear in a federal court.

The petition should be granted so that this Court, as the ultimate arbiter of due process procedures can articulate and clarify the appropriate standards for deciding cases.

III. The Court Should Grant Certiorari to Address Procedural Due Process.

A. Americans care about fairness and decency.

We share strong concerns about the fundamental and basic elements of fairness in our society. Unfortunately, the Ninth Circuit refused to accord any substantial deference to procedural due process in this case, and no doubt, to other unrepresented litigants as well.

CONCLUSION

This petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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FEBRUARY 26, 2008

APPENDIX

App. 1

UNREPORTED DECISION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NADENE M. SAMMANN, individually; et al.,

Plaintiffs-Appellants

v.

Estate of Elizabeth Sammann; et al.,

Defendants-Appellees.

No. 06-35248, 06-35534

DC No. CV-05-0929-L
Western District of Washington, Seattle

ORDER
(Filed November Twenty-Ninth, 2007)

Before: CANBY, TASHIMA, AND RAWLINSON, CIRCUIT JUDGES

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings will be accepted in this closed appeal.

App.3

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NADENE M. SAMMANN, individually; et al.,

Plaintiffs-Appellants.

v.

Estate of Elizabeth Sammann; et al.,

Defendants-Appellees.

Nos. 06-35248, 06-35534
D.C No. 05-0929 L

MEMORANDUM *

Filed September Twenty-Seventh, 2007

Appeal from the United States District Court
For the Western District of Washington
Robert S. Lasnik , District Judge, Presiding

Submitted September Twenty-Fourth, 2007**

Before: CANBY, TASHIMA, .
RAWLINSON, Circuit Judges.

In these consolidated appeals, Nadene and Marguerite Sammann appeal pro-se from the district court's order dismissng for failure to comply with court orders their action to set aside alleged fraudulent conveyances of federal oil and gas leases.

We have jurisdiction under 28 U.S.C. sec. 1291. We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P.34 (a)(2).

The district court did not abuse its discretion when it dismissed the case for failure to comply with court orders after weighing the relevant five factors. *See Pagtalunan v. Galaza,* 291 F.3d 639, 641-44(9th Cir. 2002)(stating that district court's dismissal for failure to comply with a court order is reviewed for an abuse of discretion; setting forth five factors to be considered).

The district court did not abuse its discretion when it denied the motion to amend the judgment because Appellants did not identify any new evidence, change in law, clear error, or manifest injustice. *See Sch. Dist.New. 1j, Multnomah County, Or. V. ACandS. Inc.* 5 F.3d 1255, 1262-63 (9th Cir. 1993) (stating that district court's denial of a motion to amend the judgment is reviewed for an abuse of discretion; setting forth requirements for reconsideration).

Appellants' remaining contentions are unpersuasive.

Appellants' request for judicial notice is denied.

Appellants' motion for reconsideration of the Court's January 7, 2007 order denying their motion to file a corrected replacement brief is denied. Appellants' request for a stay of the due date for their optional reply brief is denied as moot.

AFFIRMED.

Supreme Court, U.S.
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MARGUERITE SAMMANN, Individually, and as Executrix of the Estate of DR. HOWARD DAVID SAMMANN, M.D., et al.,

Petitioners,

v.

FRANCIS N. MAYER, Individually, and Louise Mayer, Individually, and as a Marital Community, et al.,

Respondents.

On Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

SUPPLEMENTAL APPENDIX

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App 1

UNPUBLISHED DECISION

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NADENE SAMMANN, et al..,

Plaintiffs,

v.

Estate of Elizabeth Sammann, et al..,

Defendants.

Case No. Co5-0929 L

ORDER DENYING MOTION
FOR A NEW TRIAL OR TO
AMEND THE JUDGMENT
AND FOR A STAY

(Filed on April twenty-fourth, 2006)

This matter comes before the Court on plaintiffs' "Motion for New Trial and/or in the alternative for Motion to Alter or Amend Order of Dismissal and Judgment and Motion for Stay." (Dkt. #97). By order dated February 28, 2006, the Court dismissed plaintiffs' complaint because plaintiffs purposefully and defiantly violated two orders of the Court, they engaged in litigation tactics that repeatedly and purposefully delayed resolution on the merits, and because other, less drastic sanctions were inadequate. (Dkt. #91, the "Order"). After plaintiffs filed their motion, defendants filed a motion for sanctions (Dkt. #101), then plaintiffs filed a motion for sanctions. (Dkt. #111).

As set forth below, the Court denies plaintiffs' motion for relief from the judgment and other relief and denies both parties' motions for sanctions.

I. FACTS

On February 1, 2006, the Court ordered plaintiffs to serve defendants with seven documents they erroneously filed under seal, including their proposed second amended complaint, a motion for leave to amend, and a motion for an extension of time to respond to defendants' pending dispositive motion.

Defendants had no access to the documents that plaintiffs erroneously and unilaterally filed under seal. 1 The Court ordered plaintiffs to serve defendants and file a certificate of service with the Court no later than February 8, 2006.

The Court issued a second order on February 14, 2006 noting that as of that date, plaintiffs had not served the documents or filed a certificate of service. The Court ordered plaintiffs to do so no later than February 21, 2006. "Otherwise, the Court will impose sanctions on plaintiffs, which may include dismissal of this case." (Dkt. #85 at p. 1). Plaintiffs did not comply with either order.

The Order dismissed the case "[f]or failure of the plaintiff. . . to comply with . . . any order of [the] Court." Fed. R. Civ. P. 41(b). The Court weighed the five factors set forth in Malone v. United States Postal Serv., 833 F.2d 128 (9th Cir. 1987).

1 Local Rule 5 requires that a party seeking to file a document under seal must file a motion to seal the document; the motion must include "a clear statement of the facts justifying a seal and overcoming the strong presumption in favor of public access." Local Rule 5(g)(2). Plaintiffs did not comply with that Local Rule.

The Court explained, "Plaintiffs' lengthy history of litigation with these defendants over the same issues presented in this case, their repeated attempts to delay consideration of defendants' dispositive motion, and their refusal to comply with the Court's rules and orders to serve their motion to file a second amended complaint and related documents are tactics which are designed to and have impeded the resolution of this case on the merits.." Order at p.4. The Court also found that plaintiffs' refusal to comply with the Court's order was willful.

II. DISCUSSION

A. Plaintiffs' Request for a Stay and for Relief from Judgment.

Plaintiffs seek a stay of the judgment pending their appeal pursuant to Fed. R. Civ. P. 62, which allows a party to move to stay execution of a judgment while a case is on appeal by posting a supersedeas bond. The standard for granting a stay pending appeal is effectively the same as that for issuing a preliminary injunction. See, e.g. Lopez v. Heckler, 713 F.2d 1432, 1435 (9th Cir. 1983). The Court weighs the parties' likelihood of success on the merits, the possibility of irreparable harm, the relative hardship of the parties, and the public interest.

See Nautilus Group, Inc. v. Icon Health & Fitness, Inc., 308 F. Supp. 2d 1208, 1216 (W.D. Wash. 2003). Plaintiffs have not shown a likelihood of success on the merits. They have not offered any arguments regarding the other factors. Accordingly, the Court finds that a stay is not warranted.

Plaintiffs have requested relief pursuant to Fed. R. Civ. P. 59, which applies when a party seeks a new trial. Because there was no trial in this case, that rule is inapplicable.

Although plaintiffs did not cite the rule, the Court construes their motion as one for relief from the judgment pursuant to Fed. R. Civ. P. 60. Pursuant to Fed. R. Civ. P. 60(b), a judgment may be vacated for any one of the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under 59(b); (3) fraud. . . misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied. . . or (6) any other reason justifying relief from the operation of the judgment.

Plaintiffs' motion does not assert that any of the specifically enumerated grounds apply. The Court therefore considers the motion under subsection 6. Fed. R. Civ. P. 60(b)(6) is an equitable remedy that should be applied only in extraordinary circumstances. See, e.g., United States v. Alpine Land & Reservoir. Co., 984 F.2d 1047, 1049-50 (9th Cir. 1993). Plaintiffs offer a series of irrelevant arguments in support of their motion, including facts related to the initial processing of their complaint and arguments in opposition to defendants' dispositive motion. None of those arguments explains plaintiffs' willful failure to comply with two of this Court's orders.

Plaintiffs also misconstrue some of the facts. For example, they allege various errors in the Court's ruling on defendants' dispositive motion; the Court, however, never ruled on that motion. See, e.g., Plaintiffs' Motion at p. 13 ("This Court also abused its discretion by ruling against our securities claims using a statute of limitations defense that was clearly invalid"). Furthermore, the Court found that dismissal was the appropriate sanction in part because plaintiffs had "repeatedly and purposefully delayed resolution on the merits." Order at p. 3. The Court noted that plaintiffs repeatedly sought continuances of defendants' pending dispositive

motion in part to conduct discovery, yet they never sought any discovery. Plaintiffs now argue that they failed to conduct discovery because defense counsel served a notice of unavailability for December 12-19, 2005. Plaintiffs' claim that they failed to conduct any discovery during the three months the dispositive motion was pending because of counsel's one-week unavailability is untenable.

Plaintiffs also argue that they did not comply with the Court's orders because the Court erroneously ordered them to serve all defendants, including the proposed new defendants who were the subject of plaintiffs' motion to amend and proposed amended complaint. The Court's orders are devoid of any such instruction. Because the Court never granted plaintiffs' motion to amend, the proposed new parties were not defendants. Moreover, despite the fact that plaintiffs filed numerous motions challenging the Court's orders in various ways, they never expressed any confusion or disagreement about which defendants to serve. These facts undermine their newly presented excuse for failing to serve defendants as required by the Court's orders and rules.

Plaintiffs also argue that the Court erred in ordering them to serve defendants with their motions, proposed amended complaint, and the other docu-

ments they erroneously filed under seal and refused to serve. Plaintiffs' disagreements with the Court's prior orders have been raised and rejected in prior motions and do not constitute "extraordinary circumstances justifying relief from the judgment." Although plaintiffs have disputed their obligation to serve their proposed second amended complaint, they have no plausible basis to refuse to serve the other erroneously sealed documents, including their motion for an extension. For all of these reasons, plaintiffs' motion for relief from the judgment and other relief is denied.

Finally, plaintiffs request that the Court permit them to amend their complaint. In their motion, however, they acknowledge that "Rule 15 is inapplicable unless a party obtains relief under Rule 59 or Rule 60." Plaintiffs' Motion at p. 19. Because plaintiffs' motion for relief from judgment is denied, their request to amend their complaint is denied.

B. Defendants' Request for Sanctions.

Defendants request sanctions against plaintiffs "for continuing a pattern of frivolous motions which the defendant believes is intended to harass and cause delay." Defendants' Opposition at p. 2. Defendants request sanctions pursuant to Fed. R. Civ. P. 11; however , the request does not meet the requirements of Fed. R. Civ. P. 11(c)(1)(A).

Furthermore, as plaintiffs correctly point out, defendants cannot recover their costs or attorneys' fees as the prevailing party because they did not file a timely motion for that relief. Local Rule 54(d)(1); Fed. R. Civ. P. 54(d).

The Court also has inherent authority to sanction any party pursuant to General Rule 3. Although the Court has found that plaintiffs willfully violated two Court orders and engaged in improper litigation tactics, the Court has already imposed the drastic sanction of dismissal. Therefore, the Court will not impose monetary sanctions on plaintiffs at this time. However, if plaintiffs engage in further litigation misconduct, including filing frivolous motions, the Court may reconsider the imposition of sanctions.

C. Plaintiffs' Request for Sanctions

Plaintiffs request sanctions against defendants, arguing that they incurred additional service costs because defense counsel Alan Funk("Mr. Funk") did not provide them or the Court with his current address. Plaintiffs state that they attempted to serve documents on Mr. Funk on Friday, March 31, 2006, but when they arrived at his law office at 4:45 p.m., the receptionist had left for the day. Plaintiffs quest-

ioned attorneys from other firms about Mr. Funk's whereabouts, and those unnamed attorneys informed them that Mr. Funk was no longer a tenant in the building. At the advice of a postal worker, plaintiffs subsequently mailed their documents to Mr. Funk via certified mail and asked for "Address Service Requested." Certificate Regarding Service (Dkt. #109) at p. 4. Plaintiffs request sanctions in the amount of $500.00 " for the trouble and expense [they] had to go thru, and $45.96 for costs of service." Declaration of Nadene Sammann (Dkt. #111) at p. 3. After plaintiff incurred those costs, Mr. Funk's colleague, J. Stephen Funk, informed plaintiffs that Mr. Funk was no longer representing defendants.

If plaintiffs' allegations are true and Mr. Funk no longer represents defendants, then he is required to follow the procedures to withdraw set forth in General Rule 2(g)(4)(A). His failure to follow those procedures, however, did not cause the "effort" and expense plaintiffs incurred. Even if plaintiffs believed that Mr. Funk no longer represented defendants, they could have served his co-counsel, J. Stephen Funk. Furthermore, pursuant to Fed. R. Civ. P. 5(b), plaintiffs could have left the documents at defense counsel's office " in a conspicuous place" or mailed them to their address in the record. Rather than following the procedures set forth in the rules, plaintiffs took it upon themselves to attempt to

investigate Mr. Funk's new address and serve him there. Any additional effort and expense appear to be the result of plaintiffs' own actions, so sanctions are not warranted.

In their reply memorandum, plaintiffs also request sanctions based on defendants' counsel request to withdraw. The Court will address the motion to withdraw and plaintiffs' request for sanctions on that basis by separate order.

III. CONCLUSION

Accordingly, the Court DENIES plaintiffs' motion for a new trial and other relief (Dkt. #97), DENIES defendants' motion for sanctions (Dkt. #101), and DENIES plaintiffs' motion for sanctions. (Dkt. #111).

DATED this 24th day of April, 2006.

/s/ Robert S. Lasnik
United States District Judge

UNPUBLISHED DECISION

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON STATE
AT SEATTLE

NADENE SAMMANN, *et al.*,

Plaintiffs,

v.

Estate of Elizabeth Sammann,
et al.,

Defendants.

Case No. CO5-0929 L

ORDER OF DISMISSAL

(Filed February twenty-eight, 2006)

This matter comes before the Court *sua sponte* based on plaintiffs' unexplained refusal to comply with two orders of this Court.

On February 1, 2006, the Court ordered plaintiffs to serve defendants with seven documents they erroneously filed under seal, included[sic] their proposed second amended complaint, a motion for leave to amend, and a motion for an extension of time to respond to defendants' pending dispositive motion. Defendants had no access to the documents that plaintiffs erroneously and unilaterally filed under seal. The Court ordered plaintiffs to serve defendants and file a certificate of service with the Court no later than February 8, 2006.

The Court issued a second order on February 14, 2006 noting that as of that date, plaintiffs had not served the documents or filed a certificate of service. The Court ordered plantiffs to do so no later than February 21, 2006.. "Otherwise, the Court will impose sanctions on plaintiffs, which may include dismissal of this case." (Dkt. # 85 at p. 1). Plaintiffs have not complied with either order. Furthermore, they have offered no explanation or excuse for their failure to do so.

A court may dismiss a case "[f]or failure of the plaintiff. . . to comply with. . any order of [the] court." Fed. R. Civ. P. 41(b). A court's decision to dismiss for

failure to comply with its orders is governed by the five factors set forth in Malone v. United States Postal Serv., 833 F.2d 128 (9th Cir. 1987). The Court considers: " (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." Id. at 130. The first two factors support dismissal of this case. Plaintiffs dilatory conduct has impeded the resolution of this case. Defendants cannot address the merits, or lack thereof, of plaintiffs' proposed amended complaint and motion for leave to file it without copies of those documents. Although plaintiffs have disputed their obligation to serve their proposed second amended complaint, 1

1 Plaintiffs argued that they should not be required to serve their proposed second amended complaint because it contains allegations under the False Claims Act ("FCA"), 31 U.S.C. Sec 3729 *et seq.* Although plaintiffs are correct that a FCA complaint must remain under seal for at least 60 days pursuant to the statute, plaintiffs did not file this case under the FCA. Instead, after defendants filed their dispositive motion, plaintiffs sought leave to amend their complaint to add a new FCA claim. In that context, the Court found that permitting the amendments without granting the defendants an opportunity to respond to the motion to amend would be fundamentally unfair.

they have no plausible basis to refuse to serve the other erroneously sealed documents, including their motion for an extension. Plaintiffs' refusal to comply with this Court's orders has also prejudiced defendants by delaying their ability to resolve the matter.

The Court also considers the public's interest. Plaintiffs' proposed amended complaint contains FCA claims, albeit ones that appear frivolous. Although public policy favors resolution on the merits, plaintiffs have repeatedly and purposefully delayed resolution on the merits. Plaintiffs have pursued litigation against defendants since 1994, when they filed suit against them in state court. The Superior Court dismissed their claims on a motion for summary judgment and imposed sanctions pursuant to Rule 11 for "[f]iling this untimely lawsuit in November 1994, and continuing to pursue it for more than 6 years thereafter." (Dkt. #29). Defendants filed a dispositive motion in this Court based on improper venue, lack of jurisdiction, res judicata, collateral estoppel, statute of limitations, and failure to state a claim (defendants' motion"). Plaintiffs have repeatedly delayed consideration of that motion, noted for December 9, 2005. They requested an extension of time of more than two months to work on their filings

and to obtain a generation skipping trust document through discovery. The Court granted the request and renoted the motion for February 10, 2006. As the deadline for filing their response to defendants' motion approached, plaintiffs filed a motion to amend their complaint to add a FCA claim. Plaintiffs also filed a motion for a 91-day extension of time to respond to defendants' motion based on their assertion that the proposed amended complaint had to be sealed for 60 days pursuant to the FCA. The Court denied the request for an extension because plaintiffs had not served the motion on defendants.

On February 6, 2006, the date their response was due, plaintiffs filed two motions requesting extensions of time to respond to defendants' motion. The Court granted a one-week extension. Plaintiffs filed a fourth request for an extension on February 17, 2006, requesting an additional thirty-day extension to obtain two documents, including the generation skipping trust. Plaintiffs, however, did not explain their failure to obtain the documents earlier or to propound any discovery requests during the pendency of the case.

Plaintiffs' lengthy history of litigation with these defendants over the same issues presented in this case, their repeated attempts to delay consideration of defendants' dispositive motion, and their refusal to comply with the Court's rules and orders to serve their motion to file a second amended complaint and related documents are tactics which are designed to and have impeded the resolution of this case on the merits . 2

The Court has also considered less drastic sanctions and found them inadequate. The Superior Court imposed Rule 11 sanctions on plaintiffs, and the Washington State Court of Appeals awarded attorney's fees for filing a frivolous appeal. (Dkt.#29). Nevertheless, plaintiffs filed the same claims against defendants in this Court. When plaintiffs failed to comply with this Court's February 1, 2006 order, the Court warned plaintiffs that failure to comply would result in the imposition of sanctions, including dismissal. See, e.g., Malone, 833 F.2d at 132(noting that alternate sanctions include a warning). Plaintiffs

2 It appears that defendants' pending dispositive motion would be granted because plaintiffs' claims are barred by the statute of limitations and the doctrines of res judicata and collateral estoppel.

were given ample time to comply, and have filed other, unrelated documents in the interim. These facts, and the fact that plaintiffs have stridently disagreed with the Court's order, indicate that their refusal to comply is willful. 3 As in Malone, plaintiffs have "purposefully and defiantly violated a court order," warranting the sanction of dismissal. Id.

Accordingly, this case is DISMISSED. The Clerk of the Court is directed to enter judgment in favor of defendants and against plaintiffs.

DATED this 28th day of February, 2006.

/s/ Robert S. Lasnik
United States District Judge

3 Plaintiffs filed a motion for reconsideration of the order, and a motion to stay the order pending resolution of the motion for reconsideration. (Dkt. ## 76, 80).

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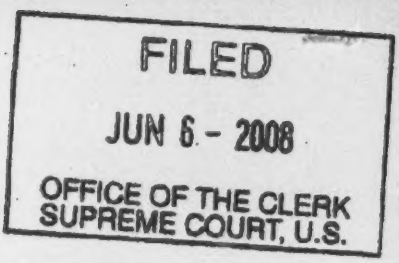

(3)

No. 07-1171

In The
Supreme Court of the United States

MARGUERITE SAMMANN, Individually, and as Executrix of the Estate of DR. HOWARD DAVID SAMMANN, M.D. et al.,

Petitioners,

v.

FRANCIS N. MAYER, Individually, and LOUISE MAYER, Individually, and as a Marital Community, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit

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PETITION FOR REHEARING

MARGUERITE SAMMANN
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PETITION FOR REHEARING

Petitioners Marguerite and Nadene M. Sammann, appellants, No. 07-1171, respectfully move the Court for an order 1) vacating denial of the petition for writ of certiorari, entered on May 12, 2008, and 2) granting the petition.

The Ninth Circuit affirmed a single Federal Judge's sua sponte dismissal of petitioners' substantial monetary claims for federal Oil and Gas Leases and other properties, based on grounds of res judicata, collateral estoppel and statute of limitations from a prior state case.

Petitioners state the following reasons for rehearing:

1. **Exceptional Circumstances-Grave Miscarriage of Justice-Unfair Proceedings in the prior state case.**

2. **Death by Gunshot of Attorney who, Unbeknownst** to petitioners, had represented almost all the parties on both sides of the state case. This had a chilling effect on our ability to secure adequate legal counsel.

3. **As a result of the misconduct and unclean hands of the defendant and his attorneys, Petitioners had No Legal Representation in the state trial and state appellate courts.**

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18 James Wm. Moore, Moore's Federal Practice, Third Edition(2008)

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A. Factual Background-Prior State Case

Marguerite and Nadene M. Sammann filed a lawsuit in 1994 in a Washington State Court for wrongful conversion against a sole defendant, Francis N. Mayer, as personal representative of the estate of Elizabeth Sammann. There were no witnesses who testified in the state case. No one was deposed, there was little or no discovery. There were no mandatory status conferences nor were there any case schedules handed out to parties. There was no jury trial or any trial.

1. Exceptional Circumstances-Unfair Proceedings in the prior state case.

Citizens are entitled to a full and fair Opportunity to litigate a cause of action. This was denied to petitioners. Defendant in his separate capacity as a personal representative, hired the long-standing attorney of the petitioners, Judson Hines, Jr.

2. Defendant Mayer Hires Same Attorney Who Represented Petitioners

Petitioners' long-standing attorneys were Judson Hines, Jr. and Stanley Riddle, Riddle and Hines. Unbeknownst to petitioners. Francis N. Mayer hired the same attorney, Judson Hines to represent Mayer.

3. Petitioners' Former Attorney Hines Found Shot to Death

Five months before the state lawsuit was filed, Judson Hines, attorney who had represented petitioners, was found shot to death. These facts were kept from us and we discovered it by accident.

4. Petitioners were Denied Adequate Discovery in the prior state case. There were no depositions, no witnesses called, the sole defendant in the state case obstructed discovery.

5. Defendants Concealed important information and Federal Claims in the prior state case.

6. There was No Identity of Parties Between The Federal Case and the prior state case. Without Identity of the Parties or Their Privies, Claim Preclusion is barred.

After we appealed the trial court decision, we discovered the existence of:

1) the false death certificate that was created and filed in the State of Minnesota

2) the federal oil and gas leases.

Both of the above claims were never in the state trial action because they were deliberately concealed from us by the defendants who did not appear in the state case: Francis N. Mayer and Louise Mayer. Both are citizens of Minnesota.

In *Marshall v. Holmes*, 141 U.S. 589, 12 S.Ct. 62, , where a woman sought to enjoin the enforcement of judgments obtained by fraud and forgery, this Court stated, opinion written by Justice Harlan,

"This Court, may, as between the parties before it, if the facts justify such relief, adjudge that Mayer shall not enjoy the inequitable advantage obtained by his judgments. A decree to that effect would operate directly against him, and would not contravene that provision of the statute prohibiting a court of the United States from granting a writ of injunction to stay proceedings in a state court. It would simply take from him the benefit of judgments obtained by fraud".

We pleaded the discovery rule in the federal court and asked for Judicial Notice of the death of the attorney Hines and the false death certificate that was filed in the State of Minnesota.(See COA 9th Cir. Docket for November 3, 2006,.)

The District Court chose to ignore our assertion of the discovery rule in pleading estoppel.

And when the Ninth Circuit denied our motion for judicial notice, it chose to ignore the two most egregious facts in this case.

In at least five Circuits, (2d, 5th, 7th, 9th, 11th) the rule is well known that "a party against whom claim preclusion is asserted must have had full and fair opportunity to litigate claim in prior proceeding"

When a state court judgment is asserted as basis for preclusion in federal court, state proceedings must satisfy minimum procedural due process

We wonder if perhaps this might be a good time to develop a model of procedural fairness?

The sole defendant in the prior state case was Francis N. Mayer, appearing in his capacity as personal representative of the estate of Elizabeth Sammann.

6. There was No Identity of Parties Between the Federal Case and the prior state case. Without Identity of the Parties or Their Privies, Claim Preclusion is Barred.

In the prior state case, Louise Mayer, individually and as a marital community was never served with process, was never a named party, never appeared in the action, was never deposed.

Francis N. Mayer as an individual and as a marital community was never a named party to the prior state action, never appeared as a witness, was never deposed.

Husband and wife do not have privity for purposes of asserting res judicata or claim preclusion. [A] relationship between husband and wife or parent and child normally does not give rise to privity for purposes of claim preclusion. (Moore's Federal Practice, (2008 edition) Volume 18.

"Person who is not party to litigation is not bound by judgment in that litigation", *Hansberry v. Lee*, 311 U.S. 32, 40, 61 S.Ct. 115, 85 L.Ed.22 (1940)

In Blonder-Tongue v. University of Illinois Foundation, , 402 U.S. 313, 91 S.Ct. 1434, this Court held, in an opinion written by Justice White, that" the patentee-plaintiff must be permitted to demonstrate, if he can, that he did not have 'a fair opportunity procedurally, substantively and evidentially to pursue his claim the first time.' (quoting Eisel v. Columbia Packing Co., 181 F. Supp. 298, 301(Mass. 1960)

And

among other appropriate inquiries would be whether without fault of his own, a patentee was deprived of crucial evidence or witnesses in the first litigation."

When we discovered the additional claims in this matter, the trial court had already dismissed the state proceeding and it was under appeal in the Washington State Court of Appeals.

We had filed a timely appeal to the proper state courts. After our appeal was denied, we asked for discretionary review from the State Supreme Court. That court denied our request.

The defendant Mayer asked that a judgment be rendered against us, for bringing the appeal, and the court awarded him almost $5,000 in a judgment. The court also stated that in order to file anything with the appeals court, including any newly discovered evidence, that the judgment would have to be paid to Mayer.

During the state appeal period, we discovered additional claims that had we known existed, would have been decisive in our prevailing in the state lawsuit. As soon as we discovered them, we brought them to the attention of the state appeals court. Our timely motion to recall the mandate was denied.

The sole defendant in the state action and his attorneys had large conflicts of interest that they refused to disclose to us.

After the death of attorney Hines, Mayer replaced him with an attorney who was an officer of the King County Superior Court. When we sought discovery from the personal representative of Hines' estate, attorney Shaw came into the Hines' hearings and obstructed all discovery there. Shaw also demanded attorney fees be awarded to him, which the Court denied.

CONCLUSION

This Petition for Rehearing should be granted, and the case should be set down on the regular calendar.

Respectfully submitted,

May 31, 2008

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CERTIFICATE OF PETITIONERS

As petitioners, we hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

/s/ _____
Marguerite Sammann
Petitioner Pro-Se

/s/ _____
Nadene M. Sammann
Petitioner Pro-Se